IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1959 of 1984

Date of decision: 21-7-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BAPUBHAI ALIAS RANCHHODBHAI JIVINDBHAI PANCHAL

Versus

STATE OF GUJARAT •

Appearance:

MR SR SHAH for Petitioners

None present for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/07/97

ORAL JUDGEMENT

Heard the learned counsel for the petitioner, and perused the special civil application.

Challenge is made by the petitioner to the orders of respondents No.1 and 2 at annexures-E and F under which the petitioners were directed to pay Rs.6,779.26 ps. as non-agricultural assessment at the rate of 6 paise per sq.mt. towards penalty. The facts which are not in dispute are that the land bearing Survey No.310/2 paiki and 310/3 paiki admeasuring 1 acre and 29 gunthas in the sim of Asarwa, Taluka City and District Ahmedabad is owned by the petitioners. These lands are agricultural lands. These lands are covered by T.P.Scheme No. 30 and they are included in Final Plot No.227. According to the petitioners, as per the respondent Corporation the final plot number is 264. That is not very material. The land of the petitioners was reserved for public purpose, namely, transport service.

2. The scheme was finalised in the year 1968. Respondent No.2 issued notice under sections 66 and 67 of the Land Revenue Code, 1879 calling upon petitioner No.1 to show cause as to why action should not be taken against them for making non-agricultural use of the said land without permission of the competent authority under the provisions of the Code. The petitioners have given reply to the show cause notice and contended that the land has been reserved under the T.P.Scheme for public purpose, and as such they have no right to put any construction thereon. It has been further stated that no construction whatsoever has been put up by the petitioners, their agents or servants, and if at all there is any construction it must be of the Municipal Corporation for which the petitioners are not responsible in law. Lastly it has been stated that for last thirty to 35 years because of the T.P. Scheme these lands are lying idle and no use thereof is being made by petitioners and they are not permitted to put the said land to use. Under order annexure-D dated 9th August, 1981 respondent No.2 held that the land has been put to non-agricultural use as houses or hutments have been put up thereon and as such the petitioners are liable to pay non-agricultural assessment as well as conversion tax. Against this order the petitioners preferred appeal before respondent which came to be dismissed under order dated 15th March, 1995. Hence this special civil application.

3. Learned counsel for the petitioner, relying on the decision of this Court in the case of Vasudev Shakarabhai Modi vs. Special Secretary, Revenue Department, reported in 1985 GLH 343 contended that the construction or the hutments have not been put up by the petitioners and as such the respondents have committed serious illegality in passing the impugned orders.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners and perused the aforesaid judgment of this court. It is true that in case construction has been put up on the agricultural land, then it is put to a nonagricultural purpose, and as such the authorities can take action under sections 66 and 69 of the Code against the owners of the land. It is equally true to contend that in case the construction has been put up by the person other than the owner of the land, or by his tenant or by a person holding under or through him, then the owner cannot be made liable for the penalty or all other terms under section 66 or 79A of the Code. But on the question as to whether the petitioners have put up the construction of hutments on the land or persons other than the petitioners or their tenants or any other persons holding under or through them is a question of fact and onus lies heavily on the petitioner.

5. The learned counsel for the petitioner, on being asked by the court, very fairly admitted that the possession of the land in dispute has not been delivered by them to the Government or the Corporation. From the facts of this case it is also not in dispute that in the T.P.Scheme this land has been reserved for the public purpose, i.e. transport service. In view of these facts the contention of the petitioners before the authorities that the land has been vested in the Corporation and the possession vests in the Corporation is not tenable. Learned counsel for the petitioner has failed to show from the Town Planning & Urban Development Act that the land which has been reserved therein for public purpose vests in the State Government or the authority for whom ithas been reserved. The scheme underlying the Town Planning Act is that the land which has been reserved for public purpose still continues with the owner and in case within the time limit as provided therein it is not used for the public purpose for which it is reserved, then the owner has right to give notice to the acquiring body, and the land may be reverted back to the owner. The petitioners have not produced any evidence on the record of the case that persons who are there on the land are persons other than the category of persons holding under

or through them. Looking to the fact that this land has been reserved for all these years and the petitioners may be instrumental or may be in connivance with other persons would have put up construction thereon so that the land may not ultimately remain available for public purpose, free from encumbrance or dispute, with the object to frustrate the very purpose for which this land has been reserved in the T.P. Scheme. There is distinguishing feature in between the present case and the case which was there for consideration before this Court in the case of Vasudev Shankerbhai Modi (supra). There the petitioner, owner of the land, has taken all actions against the trespassers and there also litigations between the co-owners. Here the petitioners have not taken any action against the persons who have raised construction or put up hutments in the land. It is not in dispute that the construction of the hutments are there on the land. The petitioners are the owners of the land and they continue to be the owners; the land vests in them and and there may be possibility of reversion of the land to them. Still they have not taken any action against these persons. So the only inference which necessarily follows from this act of the petitioners is that the persons who have put up construction or hutment on the land are the persons holding the land under or through the petitioners. Both the authorities have decided the matter against the petitioners. I do not find any illegality in these orders which calls for interference of this court.

6. This petition has been filed by the petitioners under Article 227 of the Constitution of India. This court is not justified in exercising jurisdiction under Article 227 of the Constitution of India in each and every case. This court sitting under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. As stated, the burden lies on the petitioners to show and establish that the persons who are there in occupation of the land and who have put up construction and used the same for nonagricultural purpose are altogether strangers to the petitioners.

7. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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